

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HENRY A. UMOUYO,

Plaintiff,

v.

BANK OF AMERICA, N.A.;
CARRINGTON MORTGAGE SERVICES,
LLC; AND ANY UNKNOWN HEIRS,
DEVISEES, GRANTEEES, CREDITORS,
AND OTHER UNKNOWN PERSONS OR
UNKNOWN SPOUSES CLAIMING BY,
THROUGH AND UNDER BANK OF
AMERICA, N.A.,

Defendant.

Case No. 2:16-CV-01576-RAJ

ORDER

This matter comes before the Court on Plaintiff's Motion to Amend the Original Complaint. Dkt. # 53. Defendant Bank of America does not oppose Plaintiff's Motion to Amend, but Defendant Carrington Mortgage Services LLC ("Carrington") has filed a Response, and Plaintiff filed a Reply. Dkt. ## 54, 55.

Amendment to pleadings is governed by Federal Rule of Civil Procedure 15(a). Rule 15(a) "provides that a party's right to amend as a matter of course terminates 21

1 days after service of a responsive pleading or 21 days after service of a motion under
2 Rule 12(b), (e), or (f), whichever is earlier.” *Montz v. Pilgrim Films & Television, Inc.*,
3 606 F.3d 1154, 1159 n. 1 (9th Cir. 2010); Fed. R. Civ. P. 15(a)(1)(B). “In all other cases,
4 a party may amend its pleading only with the opposing party’s written consent or the
5 court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ.
6 P. 15(a)(2). “In exercising this discretion, a court must be guided by the underlying
7 purpose of Rule 15 to facilitate a decision on the merits, rather than on the pleadings or
8 technicalities.” *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991); *United*
9 *States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Further, the policy of favoring
10 amendments to pleadings should be applied with “extreme liberality.” *DCD Programs,*
11 *Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

12 Here, Plaintiff moves for leave to amend its Complaint to, among other changes,
13 remove Carrington as a Defendant, and add Aniedi Umouyo as a Plaintiff. Dkt. # 53-1.
14 Bank of America does not oppose. *See* Local Civ. R. 7(b)(2) (“[I]f a party fails to file
15 papers in opposition to a motion, such failure may be considered by the court as an
16 admission that the motion has merit.”). Carrington filed a Response, indicating that it
17 does not oppose being removed as a Defendant, but opposes being named in a request for
18 declaratory relief barring Carrington from “initiating foreclosure actions or foreclosing on
19 this property by the 6 years status of limitation.” Dkt. ## 53-1, Dkt. # 54. The Court
20 agrees with Carrington in that if it is removed as a Defendant, it should not be subject to a
21 claim for declaratory relief in Plaintiff’s Amended Complaint. Plaintiff’s suggested
22 solution to remove explicit reference to Carrington (Dkt. # 55 at 1) fails to address this
23 concern, as Carrington, as Bank of America’s “servicer,” would still be subject to
24 declaratory relief without being properly named as a Defendant.

25 Accordingly, the Court **GRANTS IN PART** Plaintiff’s Motion to Amend.
26 Plaintiff may file the Amended Complaint proposed at Dkt. # 53-1, with the exception
27 that it must remove reference to “or it’s [sic] servicer (Carrington Mortgage Services

1 LLC)” at ¶ 42.a, “and its servicer (Carrington Mortgage Services LLC)” at ¶ 42.b, and
2 any other reference to Carrington or Bank of America’s “servicer.” Dkt. # 53-1 at 10.
3 Plaintiff shall file the Amended Complaint no later than fourteen (14) days from the entry
4 of this Order. Defendant Bank of America shall file its Amended Answer, and any
5 counterclaims, no later than 21 days after filing and service of the Amended Complaint.

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7 Dated this 29th day of August, 2018.

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11 The Honorable Richard A. Jones
12 United States District Judge
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